

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

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June 11, 1997

Captain Don Mauro
Los Angeles County Sheriff's Department
Homicide Bureau
4700 Ramona Boulevard
Monterey Park, California 91754-2169

Dear Captain Mauro:

Re: S.I.D. File #: 100-8094/96-0197
L.A.S.D. File #: 095-15207-0281-055

The Special Investigations Division of the Los Angeles County District Attorney's Office has completed its review of the October 7, 1995, non-fatal shooting of Frank Gonzales by Los Angeles County Deputy Sheriff Daniel Batanero. For the reasons set forth below, this office believes that Deputy Batanero acted reasonably in self-defense and in defense of another.

The following analysis is based solely on reports prepared by the Los Angeles County Sheriff's Department, Homicide Bureau, received by this office on June 14, 1996, an oral presentation by Sergeant Don Garcia, and an examination of 57 photographs taken at the scene of the shooting.[1] No independent investigation has been conducted by members of this office.

FACTUAL ANALYSIS

On Saturday, **October 7, 1995,** at approximately 8:00 p.m., Deputies **Joseph Ramirez** and **Daniel Batanero** were in the area of Cesar Chavez Avenue and McDonnell Avenue when they saw Frank Gonzales standing at a public telephone being used by another person. As the deputies neared the two, they both saw that Gonzales was holding a small handgun in his left hand. Ramirez, who was driving a black and white patrol car stopped, and both he and Batanero stepped from the car. Both deputies were dressed in standard Sheriff's uniform.

1. These photographs will be returned to the Sheriff's Department.

Criminal Courts Building
210 West Temple Street
Los Angeles, CA 90012-3275
WEBSITE: http://www.co.la.ca.us/da

Gonzales, who was now aware of the presence of the two deputies, began to walk in a westerly direction on the south side of Cesar Chavez Avenue. Batanero told investigators that both he and Ramirez began approaching Gonzales. Both deputies had their weapons drawn, and Batanero repeatedly ordered Gonzales to "show his hands". Batanero said that he saw Gonzales put the handgun into the left exterior pocket of his jacket, but as he walked away from the deputies, he could see that Gonzales was "fumbling with something in his left, in his left pocket". According to Batanero, Gonzales walked toward a glass door at 4560 Cesar Chavez Avenue. He said that Gonzales began to turn to his left, (which was also in Batanero's direction), and at that time he could see a small black handgun in his right hand. Fearful that Gonzales was going to shoot either him or his partner, Batanero fired one round from his nine millimeter handgun at Gonzales.

Gonzales then pushed the glass door open and stumbled into a hallway. He walked down the hallway to another hallway, approached a trash can, and dropped a gun and holster into the trash container. He then walked back in the direction of Batanero and Ramirez. Both deputies tried to arrest him, but were met with significant resistance. Gonzales, who was very slippery from the loss of blood, was difficult to restrain. Both Ramirez and Batanero struggled with him. They were finally able to arrest him two blocks away with the assistance of two other deputies.

After Gonzales was finally handcuffed and arrested, Batanero returned to the hallway and examined the trash can. Inside, he found a .25 caliber semi-automatic handgun and a holster. The gun was loaded with six live rounds of ammunition. The holster had blood on it. Batanero removed the gun from the trash can and handed it to Deputy Ramirez. Ramirez then secured it in the truck of his patrol vehicle until he surrendered it to Sergeant McCann. Ramirez, who had lost his own handgun during the struggle with Gonzales, was searching McDonnell Avenue for his gun when Batanero found Gonzales' gun in the trash can.

Batanero's description of the shooting to investigators varied significantly when he testified at the preliminary hearing for Mr. Gonzales. On direct examination, Batanero testified, when asked where the gun was pointed, "In the direction of me or my partner both, in that general vicinity". The cross examination was more specific:

Question: Now you indicated before that the time that you actually saw the gun in his hand you were about five feet away, right before you shot or right before you discharged your weapon that Mr. Gonzales was pointing in the direction of yourself and your partner; is that correct?

Answer: In the general direction, yes.

Question: When you say general direction, did he--did the gun actually come down and point at both of you or was it being waved in the air?

Answer: It wasn't being waved in the air, it was pointed in a specific direction and I believe it was either pointed at me or my partner because I do not know where my partner was at that time. All it know is he was behind me. He wasn't alongside of me, but it was pointed either at me or my partner, but I can not say where my partner was.

Question: And you're sure Mr. Gonzales was facing you when you shot at him?

Answer: Yes.

Question: It was not when his back was turned?

Answer: No.

Gonzales was taken to Santa Marta Hospital for medical treatment. The medical reports, and photographs taken at the hospital, clearly establish that the round entered the inside of Gonzales' right upper arm, and exited his right forearm. In other words, the trajectory of Batanero's round was back to front, as suggested by cross examination at the preliminary hearing.

Investigators interviewed Deputy Ramirez. He described the events leading up to the shooting in much the same manner as did Deputy Batanero. He claimed, however, not to have witnessed the actual shooting. According to Ramirez, he looked back toward the public telephone because he was concerned about the person Gonzales had been with when the deputies arrived.

Investigators interviewed two civilians who were standing in front of an American Legion hall, 50 to 75 yards away. Both had been drinking beer at the time of the shooting. [redacted] said that he saw Gonzales walk away from the deputies, and that they followed him with their guns drawn. He said that there appeared to be a "small scuffle" in front of a building. He then heard a "pop". Shortly after that, the two deputies struggled with Gonzales, and then he ran southbound on McDonnell Avenue. [redacted] was also standing in front of the America Legion hall. He witnessed the incident differently. He said that Gonzales was walking backwards westbound on Cesar Chavez Avenue with his arms up at shoulder level. When Gonzales got to the glass doorway, he heard a "pop". Gonzales and the two

deputies then went into the building, out of his sight. Both [redacted] and [redacted] admitted that their ability to view the incident was hampered by distance and lighting.

Investigators attempted to interview Mr. Gonzales, but he refused to waive his Miranda rights. Prior to admonishing Mr. Gonzales of his rights, Sergeant Garcia had the following conversation with him:

Garcia: Okay, why don't you tell us before we talk to you, you know that, uhm, the deputies felt that you had a --had a weapon--

Gonzales: Uh

Garcia: --before they shot you, is that correct?

Gonzales: Uh, yes.

While that conversation is subject to differing interpretations, it certainly suggests that Gonzales admitted having a weapon at the time he was shot by Batanero.

Blood was drawn from Gonzales at the hospital. Morphine, cocaine, and cocaine metabolite were all determined to be present in his blood. His blood-alcohol level was determined to be .01%.

DNA analysis confirmed the presence of Gonzales' blood on the holster that Batanero retrieved from the trash container. Because of their struggle with Gonzales, both deputies had a considerable amount of blood on their hands and clothing. Batanero testified at Gonzales' preliminary hearing that he carefully removed the gun and holster from the trash can so as not to transfer any blood to either item.

Investigators located and interviewed [redacted]. [redacted] is the registered owner of the .25 caliber handgun that Gonzales possessed. [redacted], a long time friend of Gonzales, told investigators that he last saw the gun approximately two years earlier. He said that he left the gun at his [redacted]'s residence when they separated. Gonzales, who was also friends with [redacted]'s former wife, was a frequent visitor at her home.

Gonzales has a [redacted]. In addition to [redacted]

[redacted]. As a result of his actions on October 7, 1995, the District Attorney's Office charged Gonzales with Assault With a Firearm on a Peace Officer, and Being a Felon in Possession of a Firearm. On July 24, 1996, Gonzales pled guilty to Assault With A Firearm on Deputy Batanero. He was sentenced to state prison for four years.

CONCLUSION

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALJIC 5.30. 5.32.

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins (1961) 189 Cal. App. 2d 575.

In resorting to deadly force, Deputy Batanero was aware of several facts. He knew that Gonzales was armed with a handgun. There was no reason to believe that the weapon was not loaded. When he and Ramirez stopped their patrol car, Gonzales suddenly walked away. Gonzales ignored repeated orders to show his hands, and was seen to be fumbling in the area of his clothing where he was last seen to place his gun. According to Batanero, he shot Gonzales when Gonzales turned toward him with a gun in his right hand.

While it is apparent that Gonzales was not facing Batanero at the specific moment he was shot, this fact alone does not negate Batanero's right to use deadly force under the circumstances presented herein. Given Gonzales' conduct on the evening of October 7, 1995, it is the opinion of the undersigned that Batanero was reasonable in fearing for his safety and the safety of Deputy Ramirez. While Gonzales may not have been directly facing Batanero at the exact moment that he was shot, it would have only taken a moment for him to completely turn and fire six shots at the two deputies. Taking all of this into consideration, we cannot conclude beyond a reasonable doubt that Deputy Batanero was unreasonable in his use of deadly force.

We therefore decline to initiate criminal proceedings. We are closing our file on this matter.

Very truly yours,

GIL GARCETTI
District Attorney

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By

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c: Deputy Daniel Batanero #[redacted]